

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1220

To be argued by:
RICHARD G. ROSENBAUM

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

*B
P
S*

UNITED STATES OF AMERICA,

Appellee,

-versus-

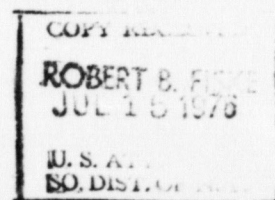
RAYMUNDA CRUZ,

Appellant.

On Appeal from the United States District
Court for the Southern District of New York

APPENDIX OF APPELLANT

RICHARD G. ROSENBAUM
Attorney for Appellant
225 Broadway
New York, N.Y. 10007



PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	<u>Page</u>
Docket Entries	A1
Indictment	A5
Superceding Indictment	A7
Excerpts of Appellant's Testimony	A11
Colloquy Concerning Testimony of Handwriting Expert	A13
Testimony of Joseph McNally	A15
Defendant's Motion for Mistrial	A16
Excerpts from prosecutor's summation	A18

COURT JUDGE WERKER

75 CML. 722

TITLE OF CASE

ATTORNEYS

For U. S.:

RAYMONDA CRUZ vs. 5/12/76

Thomas H. Sear, AUSA.
791-1986

For Defendant:

(02)

STATISTICAL RECORD

COSTS

DATE _____

NAME OF
RECEIPT NO.

REC.

J.S. 2 mailed

Clerk

J.S. 3 mailed

Marshal

Violation

Docket fee

Title 18

Sec.	1702
------	------

Obstruction of the mail.

(Eleven Counts)

DATE _____

PROCEEDINGS

7-22-75	Filed indictment.
---------	-------------------

8-4-75	Deft.(no atty.) Court directs entry of not guilty plea. Motions in 10 days. Case assigned to Judge Werker for all purposes.
	Stewart, J.

08-20-75 Filed govts. notice of readiness for trial.

08-06-25 PRE-TRIAL CONFERENCE HELD BY *Archer*

10-17-75 PRE-TRIAL CONFERENCE HELD BY *W. J. [illegible]*

01-27-76	Filed defts financial affdvt.
----------	-------------------------------

4-5-76 Filed govts. requests to charge.

4-6-76	File # CIA Form #21 copy # 5 appointing Joseph McNally as Handwriting expert dated 2-25-76...Werker, J.
--------	---

4-6-76	Filed CJA form #21 copy #2 approving payment to Joseph McNelly Waters Edge, Valley Cottage N.Y. 10988 dated 3-31-76... Worker, J
--------	--

BEST COPY AVAILABLE

PROCEEDINGS

- 76 Filed and entered nolle prosequi. Werker, J.
- 76 Filed the following papers recd. from the office of Mag. Goettel:
docket sheet; complaint filed on 3/10/75; disposition sheet
and appt. of counsel by Schechter and Roenbaum of 225 Bdwy, NYC 10007-
962-1058
- 6 Filed transcript of record of proceedings dated April 5, 6, 7 and May 3, 19

Filed 5/13/76

Case Filed
Mo. Day

04 02

76

A3
0317

JUDGE XXXXX Assigned

0863

U.S.

CRUZ, RAYMUNDA

Disp./Sentence

(LAST FIRST MIDDLE)

No. of Dets
01

JUVENILE

U.S. MAG.
CASE NO.

NY Fel x0208. 1

MAIL - FILE

AMT

Set

S

Date

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

L

U.S. TITLE SECTION
18:1702OFFENSES CHARGED
Obstruction of correspondence.ORIGINAL COUNTS
1-11SUPERSEDING
COUNTS

II. KEY DATES & INTERVALS

ARREST or

U.S. Custody Began

3-10-75

Summons Served

First Appearance

INDICTMENT

High Risk Date

Information

4-2-76

Indict. Waived

In Charging
District

Superseding

Indict/Info

ARRAIGNMENT

1st Plea

Final Plea

Trial Set For

NG G NOL

G. Plea

W. Drawn

NG G NOL

TRIAL

Vair Ore

Trial Began

Trial Ended

Disposition
of Charges

Convicted

Acquitted

Dismissed

On Government Is My

MAGISTRATE

INITIAL/NO.

OUTCOME:

Search
WarrantIssued
Return

Summons

Issued
Served

Arrest Warrant Issued

COMPLAINT

OFFENSE

(In Complaint)

DATE

INITIAL/NO.

INITIAL APPEARANCE DATE

PRELIMINARY
EXAMINATION

OR

REMOVAL
HEARING

WAIVED

NOT WAIVED

INTERVENING INDICTMENT

Date
ScheduledDate
Held

Tape Number

HELD FOR GJ OR OTHER
CEEDING IN THIS DISTRICTHELD FOR GJ OR OTHER
CEEDING IN DISTRICT

U.S. Attorney or Asst.

ATTORNEYS

Defense CJA Ret Waived Sett None / Other PD

Allen R. Bentley

791-0043

Show last names and suffix numbers of other defendants on same indictment/information

EXCLUDED

(a) (b)

DATE

(DOCUMENT NO.)

PROCEEDINGS

4-2-76

Filed indictment.

Case assigned to Judge Werker superseding 75 Cr 722.

4-5-76

Interpreter Narma Selyzur present Raymunda Cruz, Atty present
Waives formal reading & pleads not guilty. Jury trial begins.

4-6-76

Trial continues. Hearing without Jury- denied. Jury trial c

4-7-76

Trial continues & concluded Verdict guilty as charged.

Deft moves to set aside verdict- denied pre-sentence report
ordered Sentence adjourned to May 3-1976 at 9:30 A.M. in Rm
Werker, J., R.O.R.

(over)

A4

FILED JUDGMENT--(atty. Richard Rosenbaum, present with interpreter)--
 the deft. is hereby committed to the custody of the Atty. General or
 his authorized representative for imprisonment for a period of FIVE(5)
 YEARS on each of cts. 1 through 11 to run concurrently with each
 other. Pursuant to Section 3651 of Title 13, USC as amended with provisi
 be confined in a jail or treatment type institution for a period of THREE
 MONTHS as provided in the aforesaid section. Execution of the remainderd
 of the prison sentence suspended and the deft. placed on probation for a
 period of 57 months to commence upon expiration of confinement and subje
 to the standing probation order of this court. Pursuant to the
 provisions of Title 18, USC, Section 4208(a)(2) the deft. shall become
 eligible for parole at such time as the Board of Parole may determine.
 Deft. is continued releases on own recognizance until May 10, 1976
 at 10am at which time the deft. is to surrender to the US Marshal
 in Rm. 506 of this courthouse for service of sentence. Special condition
 of probation is that the deft. attend school for the purpose of learning
 the English language and improving her employment skills and the deft.
 obtain and retain gainful employment. Werker, J. (copies issued 5-4-76)

6 Filed defts. notice of appeal to the USCA from the final judgment dated
 May 3, 1976. (copies mailed to AUSA and to defts. atty. Richard Rosenbaum
 of 225 Bdwy, NYC 10007 for deft.)

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

- v -

RAYMUNDA CRUZ,

Defendant.

:
: INDICTMENT

: 75 Cr. 722

-----x
The Grand Jury charges:

On or about the dates set forth below in Counts One through Eleven, in the Southern District of New York, RAYMUNDA CRUZ, the defendant, did unlawfully, wilfully and knowingly take certain letters, addressed as hereinafter set forth, from a letter and mail carrier, before said letters had been delivered to the persons to whom they had been directed, with design to obstruct the correspondence and did open secret and destroy the letters and embezzle the contents thereof, which were checks of a total value in excess of \$1100.

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>
1	February 11, 1974	Concepcion Maria 60 W. 106th Street 3R New York, New York 10025
2	March 11, 1974	Concepcion Maria 60 W. 106th Street 3R New York, New York 10025
3	April 19, 1974	Concepcion Maria 60 W. 106th Street #4W New York, New York 10025

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>
4	June 7, 1974	Concepcion Maria 60 W. 106th Street #4W New York, New York 1000
5	July 5, 1974	Concepcion Maria 60 W. 106th Street #4W New York, New York 1000
6	July 12, 1974	Concepcion Maria 60 W. 106th Street #4W New York, New York 1000
7	August 3, 1974	Concepcion Maria 60 W. 106th Street #4W New York, New York 1000
8	September 19, 1974	Garcia Blanca 60 W. 106th Street Apt. 4R New York, New York 10025
9	October 4, 1974	Garcia Blanca 60 W. 106th Street Apt. 4R New York, New York 10025
10	October 25, 1974	Mercado Lydia 60 W. 106th Street Apt. 4E New York, New York 10025
11	November 4, 1974	Garcia Blanca 60 W. 106th Street Apt. 4R New York, New York 10025

(Title 18, United States Code, Section 1702.)

FOREMAN

PAUL J. CURRAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

RAYMUNDA CRUZ,

Defendant.

: *Supersedeas*

: INDICTMENT

: S 76 Cr. 317

:

~~the~~ Grand Jury charges:

On or about the dates set forth below, in the Southern District of New York, RAYMUNDA CRUZ, the defendant, unlawfully, wilfully and knowingly did take certain letters, addressed as set forth below, from a letter and mail carrier and which had been in a post office and authorized depository and in the custody of a letter and mail carrier, before said letters had been delivered to the persons to whom they had been directed, with design to obstruct the correspondence, and did open, secrete and destroy the letters and embezzle the contents thereof as set forth below:

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE AND CONTENTS</u>
--------------	-------------	-------------------------------

1	February 11, 1974	<u>Addressee:</u>
---	-------------------	-------------------

Concepcion Maria
60 W. 106th Street
3R
New York, New York 10025

Contents:

City of New York Check No.
51039704 in the amount of
\$67.00

COUNTDATEADDRESSEE AND CONTENTS

A8

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE AND CONTENTS</u>
2	March 11, 1974	<p><u>Addressee:</u></p> <p>Concepcion Maria 60 W. 106th Street 3R New York, New York 10025</p> <p><u>Contents:</u></p> <p>City of New York Check No. 51555563 in the amount of \$67.00</p>
3	April 19, 1974	<p><u>Addressee:</u></p> <p>Concepcion Maria 60 W. 106th Street #4W New York, New York 10025</p> <p><u>Contents:</u></p> <p>City of New York Check No. SP 34013201 in the amount of \$65.25</p>
4	June 7, 1974	<p><u>Addressee:</u></p> <p>Concepcion Maria 60 W. 106th Street #4W New York, New York 1000</p> <p><u>Contents:</u></p> <p>City of New York Check No. SP 34299113 in the amount of \$72.50</p>
5	July 5, 1974	<p><u>Addressee:</u></p> <p>Concepcion Maria 60 W. 106th Street #4W New York, New York 1000</p> <p><u>Contents:</u></p> <p>City of New York Check No. SP 34439633 in the amount of \$72.50</p>

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE AND CONTENTS</u>
6	July 12, 1974	<p><u>Addressee:</u></p> <p>Concepcion Maria 60 W. 106th Street #4W New York, New York 1000</p> <p><u>Contents:</u></p> <p>City of New York Check No. SP 34482544 in the amount of \$72.50</p>
7	August 3, 1974	<p><u>Addressee:</u></p> <p>Concepcion Maria 60 W. 106th Street #4W New York, New York 1000</p> <p><u>Contents:</u></p> <p>City of New York Check No. SP 34617011 in the amount of \$72.50</p>
8	September 19, 1974	<p><u>Addressee:</u></p> <p>Garcia Blanca 60 W. 106th Street Apt. 4R New York, New York 10025</p> <p><u>Contents:</u></p> <p>City of New York Check No. 54642255 in the amount of \$175.00</p>
9	October 4, 1974	<p><u>Addressee:</u></p> <p>Garcia Blanca 60 W. 106th Street Apt. 4R New York, New York 10025</p> <p><u>Contents:</u></p> <p>City of New York Check No. 54890764 in the amount of \$175.00</p>

10 October 25, 1974

Addressee:

Mercado Lydia
60 W. 106th Street
Apt. 4E
New York, New York 10025

Contents:

City of New York Check No.
55244687 in the amount of
\$117.20

11 November 4, 1974

Addressee:

Garcia Blanca
60 W. 106th Street
Apt. 4R
New York, New York 10025

Contents:

City of New York Check No.
55389714 in the amount of
\$175.00

(Title 18, United States Code, Section 1702.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

1 rm ja 35 Cruz - cross 224

2 in his summation.

3 MR. BENTLEY: I agree if I asked her, "Did your
4 handwriting expert come up with a conclusion that these are
5 your signatures?" that would be improper, because there is
6 no foundation.

7 However, the fact that she is not aware of
8 whether a handwriting expert for her attorney made an opinion
9 I don't think precludes me from asking whether another hand-
10 writing expert --

11 THE COURT: I think at the point where she says
12 she doesn't even know if a handwriting expert was retained,
13 you have to drop it.

14 MR. BENTLEY: Perhaps there should be an
15 instruction to the jury --

16 THE COURT: I am going to ask them to ignore
17 the last question.

18 (In open court)

19 THE COURT: The jury is directed to disregard
20 the last question asked by Mr. Bentley.

21 BY MR. BENTLEY:

22 Q Mrs. Cruz, have you given any other handwriting
23 examples to anyone since you gave the examples to Mr. Rosa
24 on March 10th?

25 MR. ROSENBAUM: Objection.

AD

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

rm ja 36

Cruz - cross

225

THE COURT: Overruled.

A No. You mean to the investigator, to the detective?

THE COURT: Anyone.

THE WITNESS: No.

Q How often in your life have you sat down at a table to write out signatures at someone else's request?

A Well, I don't know. I don't recall.

Q Is it something you do every month or so?

A Well, I don't know.

Q Is it something that is rather unusual?

A No.

Q So you might have written out some handwriting since March 10th and you might have forgotten about it, is that it?

A No.

MR. BENTLEY: No further questions.

THE COURT: Mr. Rosenbaum?

MR. ROSENBAUM: No questions.

THE COURT: You are excused.

(Witness excused)

THE COURT: We will take a recess at this point.

Again, do not discuss the case.

(Recess)

A13

1 rm ja 40

Hernandez - redirect

229

2 Q How long was Mr. Ramos living in the building?

3 A About one year and some six months, maybe more
4 yet.

5 MR. ROSENBAUM: No further questions.

6 MR. BENTLEY: Nothing further.

7 THE COURT: All right, you are excused.

8 (Witness excused)

9 MR. ROSENBAUM: Your Honor, the defendant rests.

10 MR. BENTLEY: The Government would like to
11 approach the bench for a moment.

12 THE COURT: All right.

13 (At the side bar)

14 MR. BENTLEY: The Government would intend to put
15 on a rebuttal case consisting of Mr. McNally. I spoke to
16 him a short while ago, immediately following the cross-
17 examination of the defendant. At that time he was at
18 Leonard and Church Streets and said he would come directly
19 here. I didn't have him on hand this morning, but in view
20 of the fact that he was not on my witness list and the
21 Court previously ruled he could not be called -- he is not
22 under subpoena, but has agreed to come directly here, and I
23 don't think he could have been produced any more quickly had
24 he been subpoenaed, and I have had Mr. Jones go outside and
25 see if he is here, but this is the reason why --

A14

1 rm ja 41

230

2 MR. ROSENBAUM: I would protest vigorously to
3 the putting of Mr. McNally on the stand. In order to lay
4 a proper foundation for his testimony, it would involve an
5 invasion into the work product of a defense attorney --

6 MR. BENTLEY: He is here, Judge.

7 MR. ROSENBAUM: Second of all, Judge, it would
8 be highly, highly prejudicial to the defendant. There is
9 no foundation without putting myself on the stand or getting
10 my partner on the stand.

11 THE COURT: I don't think there is any necessity
12 for that.

13 MR. BENTLEY: I think the problem to which
14 counsel is adverting is this: Mr. McNally's opinion was
15 based not only on handwriting submitted to Washington but
16 on new exemplars furnished by the defendant to her attorneys.

17 I don't see any claim of privilege with respect
18 to those documents, and as far as the authentication, I don't
19 see why counsel can't stipulate those are the known hand-
20 writings of the defendant, or if he insists on raising that
21 as an issue, he as a witness or she will have to be called
22 as a Government witness to identify that handwriting.

23 Perhaps that wouldn't be proper, but --

24 THE COURT: I will permit you to use him as a
25 rebuttal witness only to the extent of having him answer

1 rm ja 44

2 Mr. McNally was used by me, I think I should have an oppor-
3 tunity to talk to him briefly, if he wants to talk to me.

4 THE COURT: For what purpose?

5 MR. ROSENBAUM: Well, forget it.

6 I would like an instruction to Mr. McNally so
7 that he will not inadvertently go beyond the scope of his
8 testimony.

9 THE COURT: All right, talk to him.

10 (In open court)

11 MR. BENTLEY: The Government calls Mr. Joseph
12 McNally.

13 J O S E P H F. R. P. M C N A L L Y,
14 called as a witness in rebuttal by the Government,
15 being first duly sworn, was examined and testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. BENTLEY:

19 Q What is your occupation?

20 A I am an examiner of questioned documents. That
21 is more commonly referred to as a handwriting expert.

22 THE COURT: Can we have a stipulation on the
23 record as to his qualifications?

24 MR. ROSENBAUM: So stipulated.

25 Q Do you know Mr. Richard Rosenbaum, the attorney

0 All

1 rm ja 45 McNally - direct 234

2 for the defendant in this case?

3 A I have only spoken to him on the phone.

4 Q Have you ever transacted business with Mr.
5 Rosenbaum in the area of questioned documents?

6 A I have.

7 Q In connection with that business, did you receive
8 from him certain handwriting that was represented to be the
9 handwriting of one Raymunda Cruz?

10 A I did.

11 MR. BENTLEY: No further questions.

12 MR. ROSENBAUM: No cross.

13 THE COURT: You are excused.

14 (Witness excused.)

15 THE COURT: Are you at rest, Mr. Bentley?

16 MR. BENTLEY: Yes, the Government rests.

17 MR. ROSENBAUM: Defendant rests, your Honor.

18 THE COURT: We will take a short recess while
19 I have a conference with the attorneys in chambers.

20 Please do not discuss the case. You have not
21 heard it all.

22 (In the robing room)

23 MR. ROSENBAUM: Your Honor, with respect to
24 the questions put to Miss Cruz concerning her giving hand-
25 writing exemplars in my office and with respect to the

A17

1 rm ja 46

235

2 testimony elicited from Joseph McNally just now, I move
3 for a mistrial on the grounds that the material introduced
4 was an invasion of the work product rule, was an invasion
5 of attorney-client privilege, and in addition, was so highly
6 prejudicial to the defendant as to not give her a chance
7 for a fair trial.

8 That is my motion.

9 THE COURT: That is denied.

10 With respect to your requests to charge, Mr.
11 Rosenbaum, I may not repeat these verbatim as you have put
12 them in, but I think in substance I have your No. 1, your
13 No. 2. The only thing in No. 2 that I have eliminated is
14 that I have not said anything with respect to the legitimacy
15 of your attack on Government witnesses, and so forth and so
16 on. I don't include that in my charge.

17 3, I have said no to because that is a standard
18 charge in the state court but in the federal court it does
19 not apply. We have a different rule.

20 4, of course, is yes, in substance, presumption
21 of innocence, et cetera.

22 On yours, Mr. Bentley, I have gone along -- I
23 have approved of all your requests except I don't think it
24 is necessary, after I have said everything else with respect
25 to a character witness, to say that they may have been

1 am ja 61

250

2 ask Mr. Murray about his conclusion that Raymunda Cruz
3 wrote the forged signatures.. All he did was try to show
4 that Mr. Murray was a biased witness, and he tried to show
5 that the handwriting of Raymunda Cruz, her true signature,
6 could be forged by somebody else, because it was a simple
7 and deliberate handwriting.

8 What was Mr. Murray's answer to that? Well, in
9 his opinion, it is much harder to forge a deliberate, slow
10 handwriting than it would be to forge something that
11 is dashed off very quickly.

12 Finally, a couple of comments about the testimony
13 of Raymunda Cruz. She was asked on cross-examination:

14 "Did you give any other handwriting exemplars
15 other than the ones that Mr. Rosa took and had analyzed by
16 Mr. Murray?"

17 Her answer: No, I did not."

18 Well, Mr. McNally, who was called as a Government
19 witness on rebuttal testified that he had been retained by
20 Mr. Rosenbaum as a handwriting expert and, in fact, he had
21 seen certain exemplars that were furnished to him as the
22 exemplars of Raymunda Cruz.

23 Isn't it clear she denied writing those exemplars
24 because she thought that was going to hurt her case?
25 Don't you see that very same pattern throughout all the

1 rm ja 79
2 Government had proved the authenticity, the fact that
3 Raymunda Cruz signed these signatures.

4 As his Honor will instruct you, the Government
5 has the burden of proof in this case, and the defendant does
6 not have to prove anything or present any evidence.

7 However, you know that Mr. McNally, a handwriting
8 expert, was furnished certain exemplars of the defendant,
9 and don't you think if there was any question about this
10 handwriting --

11 MR. ROSENBAUM: Your Honor, I object.

12 THE COURT: Overruled.

13 MR. BENTLEY: --Mr. McNally would have been
14 here to tell you about it?

15 THE COURT: Madam Forelady and ladies and
16 gentlemen of the jury, now that the evidence is all in and
17 counsel have summed up their respective contentions, the
18 time has come for you and I to perform our respective functions
19 in the administration of justice in this case.

20 As I stated to you at the outset, it is my duty
21 to instruct you as to the principles of law to be followed
22 and it is your duty to accept those instructions as they are
23 given by me, and apply them to the evidence in this case.

24 The indictment against this defendant is not
25 evidence and it does not carry with it any presumption of